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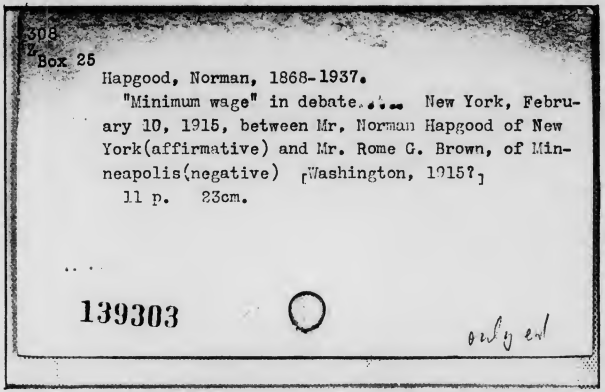

"MINIMUM WAGE"

In Debate at the Annual Dinner of the National Retail Dry Goods Association, Hotel Knickerbocker, New York

February 10, 1915

BETWEEN

MR. NORMAN HAPGOOD, of New York (*Affirmative*)

AND

MR. ROME G. BROWN, of Minneapolis (*Negative*)

NEGATIVE ARGUMENT BY MR. BROWN

Mr. President, Ladies and Gentlemen:

As Mr. Hapgood has intimated, there is a subject which I have studied longer than that of the Minimum Wage, and which I would much prefer to debate with him. No one doubts Mr. Hapgood's humanitarianism or the sincerity of his endeavors, as an editor and as a citizen, to promote the welfare of mankind. Our differences are not at all as to the objects to be accomplished, but are only as to the methods best adapted for our common purpose. I assume that all of us are interested in the welfare of women workers, and of workers of all classes, and that we desire to promote their general welfare, health and comfort, and to co-operate in any effort by which their efficiency may be increased and by which the compensation paid for their work may be raised to the highest point at which it can reasonably be maintained.

I am not, none of us are, opposed to high wages. We are in favor of a minimum wage, and that, too, a wage which is not merely commensurate with the bare cost of living, but, so far as reasonably possible, one which will supply to every worker health, comfort and happiness in the broadest sense of those terms.

What I am opposing is the compulsory legislative minimum wage in private employment; because such legislation is against the interests of both employer and employee and, further, because it is based upon a theory which is not susceptible of legislative enactment under our form of government.

When I oppose the minimum wage, therefore, I mean the statutory minimum wage. Its advocates forget that it is not for the general welfare that a temporary or local interest of one class be selected as the subject of artificial stimulation through special legislation. They forget that ultimately the prosperity of the worker is coincident with, and depends upon, the general prosperity of the community and that that general prosperity means industrial development. It means, in short, the prosperity of the employer.

FALLACIES OF THE MINIMUM WAGE

It is one of the fallacies of the minimum wage that wages can be measured out by a fixed rule, which does not take into consideration the element of efficiency. Wages must depend upon, at least must have some substantial relation to, the compensation rendered by the worker in return. Now you can not legislate efficiency. When you compel an employer to pay a wage which is fixed regardless of the worker's efficiency, you are legislating a forced gratuity to the worker, no matter that the wage be measured by the cost of living or by any other standard which disregards its fair worth. If its theoretical object of increasing the wage of the inefficient worker were practicable, the minimum wage would have the same effect upon such worker as would a pension. It would destroy initiative and ambition and deprive her of incentive toward raising her standard of efficiency; it would be a drag upon her development as a wage-earner and as a citizen. But, in practice, it can not increase the wage of the inefficient worker. It simply renders her jobless, and this, too, without any compensating benefits, either to her or to the working class or to the community.

All wages are not what they should be, but as a rule they are higher in this country than anywhere else in the world. Betterment of existing wage conditions is advancing, and it may be further advanced by co-operative effort, by enlightenment of both employer and employee. The main reason for our present higher wages, as compared with those in foreign countries, is the higher standard of labor here, and the recognition by the employer of the higher efficiency of the American worker. There are some economic facts which can not be changed by legislative fiat. Wages must depend, to some degree at least, upon wage-worth. That fact may be denied by the terms of a statute; but no statute can make it not a fact.

The abstract basis of the living wage is largely that of benevolence, but you can not create benevolence, nor the exercise of any

other virtue, by legislative enactment. There are certain precepts of morals which are not susceptible of statutory enforcement. The observer of the Golden Rule shows morality only in so far as he acts voluntarily. His action ceases to be virtuous or moral when once you have enacted into a statute the precept of the Golden Rule and when its observance is enforced under the threat of fine and imprisonment. Actions otherwise virtuous,—of benevolence, of charity, of neighborly love,—are deprived of all elements of morality when performed under compulsion. Compulsion stifles the humanitarian motive. It sets a hard and fast limit to the otherwise voluntary effort for the general welfare of the worker, and makes the artificially increased standard of wages an object of hostility and attack, instead of a goal to be reached by voluntary, co-operative, moral endeavor.

MINIMUM WAGE DEFINED

Such is the difference between the ethical minimum wage and the legislative compulsory minimum wage. For, note this: The minimum wage statute provides that, as a condition of employment, the employee must demand for her work and the employer must pay—regardless of the efficiency of the employee, or of the worth of her work to her employer, or of the ability of the employer to pay—at least such a wage as shall equal an amount necessary to furnish to the worker the cost of living in health and comfort; and this, under penalty of fine or imprisonment for the employer failing to meet the requirements. In other words, the employer is compelled to contribute to the individual, who happens to be upon his pay roll, the difference between what that individual earns and what it is deemed that it should cost her to live. It is a forced gratuity as to every cent above the reasonable worth of the worker; because the need for which the difference is supplied is one which is purely individual and does not arise out of the fact or nature of the employment. Such statutes have been passed in Oregon, California, Washington, Colorado, Wisconsin and Minnesota, where the cost of living is determined by a Commission; and in Utah, where the statute fixes the wage arbitrarily, without reference to the cost of living or any other consideration. In these states no provision is made for even considering the financial condition of the occupation or of the employer, or the efficiency of the employee. These statutes apply to women workers, and also in some states, to minors and apprentices. As to these statutes, Mr. Hapgood does not disagree very much with my position, but he

says that, under the Massachusetts statute, the compulsory feature is eliminated, and apparently he would have New York, as did Nebraska, follow the example of Massachusetts.

THE MASSACHUSETTS STATUTE OBNOXIOUSLY COMPULSORY

Now, I have had this week further opportunity to look into the Massachusetts situation, and I find that, no matter what the terms of the Massachusetts statute, in its practical effect it is most obnoxiously compulsory. Although, in terms, it affords the employer a hearing on the question of the reasonableness of the wage fixed and of his ability to pay, in practice those provisions are without effect. The State Commission and its Wage Boards are, and have been, mere instruments for carrying out the demands of the employees. Official reports of facts are ignored if they conflict with a preconceived notion as to what the wage in any occupation investigated should be. When the wage is promulgated by the Commission, although there is no fine or imprisonment for the employer, if he fails to comply he is published throughout the state as an unreasonable recalcitrant. Indeed the statute makes it a crime for any newspaper publisher to refuse thus publicly to blacklist one who may be his own relative or his best paying advertiser—or even himself. This is an attempt to legalize an official blacklist or system of boycotting. It was deemed that a penalty of fine or imprisonment for non-compliance by employers was illegal because, as was rightly assumed, non-compliance could not constitutionally be made a crime. Now, our Federal and state laws make it illegal, and the subject of heavy fine and imprisonment, for anyone, even in secret, to establish or publish a blacklist, or to organize a boycott, against any individual or any class of individuals, either of employers or employees, and this, too, whether the object is to retaliate for either lawful or unlawful action or refusal to comply with some demand. The penalties for such a boycott are more severe than any penalty ever written into a minimum wage statute; and this for the very reason that, independent of the nature of the grounds alleged for the boycott, the organized blacklisting or boycotting of a business or an individual is, of itself, so drastic, so susceptible of damage to its victim, that the law has wisely made it a criminal offense and a ground for heavy civil damages. And yet the Massachusetts statute holds over the employer a method of official blacklisting and boycotting which is more severe and more damaging than any private boycott ever attempted to be established. It is absurd, in one instance, to make a certain action by individuals a heinous crime and, at the same time, in another instance, to attempt to legalize precisely the same sort of action by or under sanction of the state. The motive is, in law and in reason, just as immaterial in the one case as in the other.

A DISCRIMINATING AND ENCROACHING PROCESS

In Massachusetts also, as in other states attempting to enforce these statutes, different standards of living are recognized for employees in different occupations, as shown by the different wages established for the various occupations in the same state and even for different classes of employees in the same occupation. But even if each worker has a right to a living wage, whence the right of one worker to a living wage greater than that of another? More than that, the wage fixed at one time is only a step to a higher wage subsequently to be fixed. Theoretically computed on the cost of living, it is not in the end computed at all. It is fixed for each class, and from time to time, as the various Boards are influenced by the demands of the employees. One encroaching step leads to another. Even now in Massachusetts the legislature is asked to add to the inquisitorial powers of the Wage Commission and to make fine and imprisonment the penalty for non-compliance.

PUTS AN EMBARGO ON HOME INDUSTRIES

The statutory minimum wage is objectionable both from an economical viewpoint and from a legal viewpoint. In the first place it creates an artificial competition with the industry upon which the minimum wage is imposed. With the increased facilities for transportation, industries today compete not alone in their intrastate trade. Their markets are extrastate; their business is nation-wide, and often world-wide. Many of you have 50%, 70%, 80%, and even more, of your trade outside the limits of your state. Mr. Hapgood has said that this disturbance of business adjusts itself because the effect of the statute goes to every similar occupation or industry in the state. This is not true, either as to your interstate or your extrastate trade. Outside the state you have to meet competitors whose cost of production is not increased by an unnatural wage-cost. They, therefore, can sell at a profit outside your state, where your margin of profit is cut down by the wage you must pay in excess of its worth to you. More than that, your intrastate trade is, in the same way, destroyed by your competitors who send goods into your state, which are produced in states where

wages are fixed with some consideration of the ability of the employee to earn and of the employer to pay. Prices at which you must sell are fixed, not by the markets of the state, but by the markets of the nation—indeed, by the markets of the world. By the Federal tariff, you may, to some extent, be protected against the competition of foreign producers whose wage-cost, and, therefore, whose prices, are below yours. But no tariff is possible between the states, and in the markets of this nation your own state, through a minimum wage statute, puts an embargo upon your industry in favor of your extrastate competitors.

INCREASES UNEMPLOYMENT

Another evil effect is, that it increases the number of unemployed. There is no problem of labor so disturbing, and especially at the present time, as that of unemployment. Workers whose standard of efficiency is even above that of a minimum wage are without work; and, with them, are the hoards of jobless inefficients. The minimum wage statute says to the latter: "You shall not work for what you can earn, although there are jobs waiting you with fair pay for what you are able to do." The employer will not keep upon his pay-roll those whose standard of efficiency is much below the fixed wage standard. Many a woman worker who, from lack of skill, is prevented from earning more than her fair cost of living, is glad to obtain work at a wage commensurate with her ability, and thereby to supplement perhaps other means of existence or to help her parents or family to a common fund for support; or, perhaps, while earning less than a full living wage, to acquire the practical experience and skill which will enable her to demand and receive that and more. All this class are driven from their present employment and kept jobless for a long time and perhaps forever. This possible effect upon the employee is admitted by the most ardent advocates of the statutory wage. Experience has demonstrated this effect. The only industry against which a statutory minimum wage has, as yet, been enforced in this country is the brush industry in Massachusetts. One brush concern, since the minimum wage for brush makers took effect, has discharged over one hundred of its unskilled employees and has reorganized its methods of work so that its less skilled labor is done by those who also perform more skilled work; and at a total wage which is $40,000, a year less than that paid formerly. In self-defense against the arbitrary interference of the state with its business, it is now forced to figure its wage-scales on a selfish basis, and with less

liberality for its employees. If the state dictates for the worker, the employer must look out for himself. So this brush concern in Massachusetts now exacts, more than ever before, from all its workers all the units of work commensurate with the total wages it is compelled to pay.

IT TENDS TO LEVEL ALL WAGES

This leads to another point. As illustrated in this very brush factory in Massachusetts, the minimum wage established by statute has the effect to lessen the advantages and the wages of the higher skilled employees. In other words, the minimum wage tends to become the maximum wage. This is by reason of the very fact of arbitrary legislative interference with wages. The only remedy for this result is, of course, that by further legislation all wages be fixed by statute and that, too, for both men and women.

IT PLACES THE BURDENS OF THE STATE ON ONE CLASS

And why should this contribution over what is earned be paid by the employer, simply for the reason that the individual who is on his pay-roll needs this excess over what she is able to earn? These statutes are based upon the purely ethical theory that each individual human being has a generic right to live in health, comfort and happiness and to have all that is necessary for that purpose. The obligation to furnish these is an obligation of the community as a whole. Upon what theory does the community as a whole shirk its burden and by legislation place the obligation upon the employer—the employer who pays toward that cost of living all that the employee is capable of earning, and who gives her the opportunity to turn her real efficiency into a fund for her support? If that fund measured by her efficiency is not sufficient for her proper support, then why should the employer contribute the difference any more than any other class? The duty to supply it is that of the community as a whole. But, if you are going to place that obligation upon a class, then why not level down the cost of living by compelling the farmer to produce and sell for less price the necessaries of life; or the merchant, who has bought from the farmer, to sell at lower prices? The employee is no more entitled to receive his cost of living, as such, from the employer than the employer is entitled to receive his cost of living or the cost of the living of his industry, as such, from the employee. Both are entitled to live, but neither is entitled to receive the cost of living, as such, from the other.

IT IS BASED ON THE THEORY OF DIVISION OF PROPERTY

The statutory minimum wage is objectionable upon legal grounds, some of which have already been indicated. I shall not here review the constitutional questions. But let me bring home to you, in a practical way, some of the constitutional points involved. The statutory minimum wage is based theoretically, and, in fact, by its very terms, upon the theory of division of property between those who have and those who have not. Furthermore, this compulsory division is attempted to be justified upon the theory that those benefited are entitled to their share, for the very reason that they have not; and that those whose property is divided should be compelled to divide, for the very reason that they have. The statutory minimum wage means, first, a forced contribution to be paid out of profits, so long as it can be paid out of profits, and no matter to what small margin of profit the employer may be forced. If it takes all of, or more than, his profits, then, so long as the employment continues, he must still make this contribution and that, too, of course, out of his capital. If he refuses, or is unable to pay it out of capital, then he must resort to the only other alternative, and that is that he must go out of business and be entirely eliminated as a "parasite" on the community. This statute, therefore, is based upon a theory which is repugnant to our social system and to our system of government; for it is the theory of the elimination of private property rights and of a division of all private property among and for the benefit of all individuals. It is based, in other words, upon the theory of socialism.

REGULATION OF HOURS A DIFFERENT QUESTION

Mr. Hapgood, as other advocates of a statutory wage, refers to the Federal decisions, enforcing regulation of hours and other working conditions, and particularly those in favor of women workers, as precedents in support of these wage measures. Let me impress upon your mind the difference. When the Supreme Court sustained the Oregon statute fixing maximum hours in certain manufacturing establishments for women workers, it held that such regulation might be reasonably enacted, because greater hours were dangerous to women in those particular employments, and because more dangerous to women than to men. The fixing of maximum hours for men had been upheld only because the occupations so regulated presented, from their very nature, hazards to the workers if longer hours applied.

In every case of the regulation of hours, the protection to the worker has been against a hazard or need which arose out of the employment in question and which was peculiar to such employment. So the Factory Acts compel the employer, at his own expense, to protect the employee against the hazards of unsafe machinery, and of unsanitary conditions of work; in other words, to protect employees against hazards which are peculiar to the employment in question and which arise out of the fact of the employment. So the Workmen's Compensation Acts, at the expense of the employer, protect the employee against casualties arising out of and because of the hazards of the employment. Those needs and hazards protected against are the needs and hazards, not individual to the employee, but peculiar to the occupation regulated and are confined to those which arise out of the employment. Such regulations are upheld only for that reason; and for that reason alone, it is held that the legislature, under the police power of the state, can make and enforce such regulations.

But that is not the case of the minimum wage regulation. The need of the employee for an amount above what he earns, to make up the necessary cost of living, is a purely individual need; it is peculiar to him in his individual capacity as a human being. It exists before employment, it exists afterwards, just as much as, and even more than, during employment. It does not arise out of the employment. There is, therefore, no warrant in law, under our system of government, to compel the employer to contribute to the worker's cost of living as such. There are other individual needs which might quite as well be supplied,—sick benefits for the employee and his family, old age and non-employment pensions. These are all needs worthy of consideration and invite the most careful and conscientious effort of benevolent people. We may admit that the obligation to furnish them is one which rests upon the community, or upon the state; but that fact is no basis, either in law or reason, for the community or the state to compel one class of individuals to furnish these benefits for another class.

Even Father Ryan, in his published writings, admits that the minimum wage problem can not be solved in this country by compulsory legislation without amendments to the Federal Constitution and to the state constitutions. Yet in Boston, the other night, he intimated that the Federal Supreme Court would stultify itself if it did not hold the Oregon minimum wage statute consistent with the Federal Constitution as it is now written. Though he is an avowed antagonistic of socialism, he is so obsessed with this mini-

mum wage fallacy that he would have the Supreme Court of the United States, regardless of the Constitution, change this system of government, from one which is based upon the sanctity of private property, to a form of government which is based upon the doctrine of the destruction of both the right of private property and the liberty of contract.

LEADS TO PATERNALISTIC INTERFERENCE

If the legislature can fix a minimum wage, it can fix a maximum wage. If it can forbid an employee to contract for a wage commensurate with his ability, it can compel that employee to work for a wage which is less than is commensurate with his ability. If it can and does legislate minimum wages, it can and must legislate all wages, and for all occupations and for all classes of workers. If it can legislate wages, it can legislate prices,—the prices of goods produced by the farmer, the prices of goods produced by the manufacturer, the prices of goods sold by the merchant, retail or wholesale. This would introduce a paternalism in governmental affairs which would reach every detail of your private business and every transaction of trade and commerce. As American citizens you are not ready for that; but that is precisely what is meant by this sort of legislation.

NO RELATION BETWEEN WAGES AND MORALS

The claim that the wages and morals of the worker have any real connection has been abandoned. The Wisconsin legislative committee, in its recent report, asserts that there is no connection between wages and morals. Judge Catlin of Minnesota, in declaring the minimum wage statute of that state unconstitutional, and recognizing its result as depriving of employment women who are otherwise able to get employment, said, that if there was any connection between wages and morals, the statute in question was a statute to promote immorality.

EXPERIENCES IN OTHER COUNTRIES MISLEADING

My time permits only a word as to the conclusions suggested by Mr. Hapgood from the history of the minimum wage statutes in New Zealand, Victoria and England. Those statutes apply generally to both men and women. They are confined to a comparatively few industries and apply to a comparatively small number of workers. This point of difference has been forcibly presented to you this

evening by Mr. Straus. The British expert, Mr. Aves, who examined conditions in Australasia, after ten years' experience there with the minimum wage, reported that the experiment in those countries could not justify its adoption in England, much less its adoption as a compulsory measure. He said that the benefits which had been reached were primarily those of increased co-operation on the part of the employer and through voluntary action. As administered there it was not drastic nor offensive to either employer or employee.

But these experiences under a form of government different from ours are not precedents for us. In England and in Australasia the legislative discretion is comparatively unlimited. It may have the effect to confiscate property or to restrict the liberty of contract. Not so here. The limitations existing upon the powers of legislation in this country are those very restraints which were intended to protect, and have, in fact, protected, the rights of life, liberty and property in this country more fully than under any other government. Violence of these restraints upon legislation means violence to the very protective features of our form of government. It is a violence destructive of the security, which you and I and every citizen enjoy, that our fundamental rights shall not be divested or infringed upon by the passing whim of majorities.

The statutory minimum wage establishes a system of legislative interference with individual rights of property and of contract, repugnant to the rights and interests of both employer and employee. The employer who has studied the measure rightly regards it as an unwarranted menace to his business. Employees and their representatives, who appreciate its real significance, perceive the fact that a compulsory wage leads necessarily to compulsory employment; in the words of Samuel Gompers, it tends toward slavery. Intelligent students of industrial problems—President Wilson, for example,—recognize its ultimate tendency of lowering high wages, instead of raising low wages; and they view it as promotive of injury, rather than of welfare, to the community.

I conclude, therefore, that, as a social welfare measure to be worked out by organization, co-operation, enlightenment and education, the object of the minimum wage is beneficent and worthy of our united and hearty support. When, however, it is enacted into a statute, either directly or indirectly compulsory, it becomes a measure which is repugnant to the interests of both employer and employee. It becomes a measure which is unworkable and fundamentally vicious. Its enactment is a long step toward the establishment of socialism.

PRESS OF BYRON S. ADAMS
WASHINGTON, D. C.

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TITLE